

Transcript of the Testimony of:

FREDERICK CULLEN

Date: June 26, 2017

Case: ROD SLAPPY-SUTTON v. SPEEDWAY, LLC

DIAMOND COURT REPORTING
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Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

 ROD SLAPPY-SUTTON, :
 And :
 JEAN SUTTON h/w :
 :
 Plaintiffs, : No.
 : 2:16-cv-04765
 vs. :
 :
 SPEEDWAY, LLC, :
 :
 Defendant. :

June 26, 2017

Oral Deposition of FREDERICK CULLEN,
 taken at the Law Offices of Litchfield Cavo, 1515
 Market Street, Suite 1220, Philadelphia,
 Pennsylvania 19102, on the above date, beginning
 at approximately 10:12 a.m., before Douglas S.
 Diamond, Certified Court Reporter and Notary
 Public in and for the Commonwealth of
 Pennsylvania, there being present.

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Page 2

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 20 * * * * *

21 ALSO PRESENT:
 22 ROBERT DOYLE
 23
 24

Page 3

I N D E X		PAGE
1	WITNESS	
2	FREDERICK CULLEN	
3	Examination by Mr. Fox:	4
4		
5		
6		
7		
8		
9		
10		
11		
12	EXHIBITS	
13	NO. DESCRIPTION	PAGE
14	D-1 Invoices	4
15	D-2 Color Photocopy of Photograph	14
16	D-3 Color Photocopy of Photograph	18
17	D-4 Color Photocopy of Photograph	20
18		
19		
20		
21		
22		
23		
24		

Page 2

Page 4

1 ---
 2 (It was stipulated by and between
 3 counsel that signing, sealing,
 4 certification and filing be waived; and
 5 that all objections, except as to the
 6 form of the question, be reserved until
 7 the time of trial.)
 8 ---
 9 . . . FREDERICK CULLEN, having been
 10 duly sworn, as a witness, was examined
 11 and testified as follows . . .
 12 ---
 13 EXAMINATION
 14 ---
 15 BY MR. FOX:
 16 Q. Could you state your name for the
 17 record, please?
 18 A. Frederick Cullen.
 19 Q. Mr. Cullen, my name is John Fox. I
 20 represent Rod Sutton and his wife regarding an
 21 accident that happened at the Speedway location at
 22 258 South Easton Road in Glenside.
 23 Have you ever given your deposition
 24 before?

Page 5

1 A. No.
 2 Q. I'm going to be asking you a number
 3 of questions about any knowledge you might have
 4 with this particular location and the issues that
 5 are relevant to that. There's a court reporter
 6 here. He's taking down my questions and your
 7 answers. If you don't understand a question that
 8 I ask, feel free to tell me that. I don't always
 9 ask the most artful questions. So chime in if you
 10 really don't understand the question. The court
 11 reporter can't take down nods OF the head. So
 12 you're going to have to verbally respond.

13 A. Okay.

14 Q. Also, let me finish my question
 15 before you answer for the benefit of the court
 16 reporter. He can't take both of us talking over
 17 one another. And if you don't know an answer it's
 18 simply okay to say I don't know or I don't recall
 19 or any of those kind of answers. So with that, by
 20 whom are you employed?

21 A. Speedway.

22 Q. For how long have you been employed
 23 by Speedway?

24 A. Two years.

Page 6

1 Q. Where did you work before Speedway?
 2 A. Mullen Contracting.
 3 Q. For how long did you work at Mullen
 4 Contracting?
 5 A. Ten years.
 6 Q. What did you do for Mullen?
 7 A. Pump and tank maintenance.
 8 Q. What's involved with pump and tank
 9 maintenance?
 10 A. Fixing gas dispensers, fixing
 11 motors, working on sensors.

12 Q. And when was it that you -- you
 13 said you've been employed with Speedway for about
 14 two years. When was it that you were hired by
 15 them?

16 A. I can't recall the exact date. I
 17 think it was right in the beginning of June of
 18 '15.

19 Q. June of 2015, okay.

20 And when you were hired by
 21 Speedway, what was your position or title?

22 A. Lead maintenance technician.

23 Q. And what were your duties with
 24 respect to lead maintenance technician?

Page 7

1 A. Work on service calls that were
 2 called in to me.

3 Q. Were they still mostly -- were they
 4 related to pump and tank maintenance or was it
 5 broader maintenance?

6 MR. DROOGAN: Just let him finish
 7 his question first. Thanks.

BY MR. FOX:

9 Q. Or was it broader than that?

10 A. Broader than that.

11 Q. Was the location, the Speedway
 12 location at 258 South Easton, I'll just call it
 13 the Glenside location, if that's okay with you.

14 The Glenside location, was that
 15 location a location where you would have been
 16 responsible as a lead maintenance technician?

17 MR. DROOGAN: Objection to the form
 18 of that question.

19 You may answer.

20 THE WITNESS: Yes.

21 BY MR. FOX:

22 Q. Do you recall the first time that
 23 you were -- that you visited that location?

24 MR. DROOGAN: Ever?

Page 8

1 BY MR. FOX:

2 Q. Since it became a Speedway?

3 A. No.

4 Q. Do you recall the reason for the
 5 first time you ever visited that location?

6 A. No.

7 Q. Do you recall doing work on the
 8 pump and tank or dispensers at that location in
 9 September or October 2015?

10 MR. DROOGAN: Objection to the form
 11 of the question.

12 You may answer.

13 THE WITNESS: No.

14 BY MR. FOX:

15 Q. I'm going to show you what I have
 16 collectively marked as D-1, there's ten pages to
 17 it, and ask you if you have seen those documents
 18 before?

19 MR. DROOGAN: You can ask him
 20 whether he's ever seen these in
 21 connection with his work at Speedway.

22 MR. FOX: Yes.

23 MR. DROOGAN: That's what he's
 24 asking you.

Page 9

1 BY MR. FOX:

2 Q. Have you ever seen these documents
3 in connection with your work at Speedway?

4 A. These here? (Witness indicating.)

5 Q. Yes.

6 A. No.

7 Q. You never have?

8 A. No.

9 Q. I'd like you to take a look at
10 those documents.

11 A. (Witness complies.)

12 Again, no.

13 Q. And looking at the documents,
14 generally speaking as a whole, do you know what
15 work those documents are referring to at the
16 Glenside location?

17 A. I know of the work that was
18 completed, yes.

19 Q. Were you involved in any way with
20 the work that was completed and as referenced in
21 these documents that's have been marked as D-1?

22 A. Not at all.

23 Q. Do you know why your name is listed
24 on some of the documents as the maintenance

1 MR. FOX: Yes.

2 THE WITNESS: Like before it
3 started, when they were going to do it?

4 BY MR. FOX:

5 Q. That's a good question. Did you
6 know that this work was requested by Speedway from
7 Crompco to do this work?

8 A. No.

9 Q. Did there come a point in time
10 where you became aware that this work was being
11 performed by Crompco?

12 A. When it was done?

13 Q. Well, how about as it was being
14 done?

15 A. No, not that I recall.

16 Q. So just to clarify, so when this
17 work was being done as described in Crompco's
18 document listed as Page 4 and 5 you did not have
19 any knowledge that this work was being done?

20 A. Not that I recall.

21 Q. Did there come a time when you
22 became aware of the work that was performed by
23 Crompco?

24 MR. DROOGAN: At this store?

Page 10

1 technician?

2 A. Yes.

3 Q. And why is that?

4 A. Because I was the maintenance
5 technician for the store whenever this was printed
6 out.

7 Q. So just so looking -- if you go --

8 I've just handwritten the pages, the page numbers.

9 Going to Page 4 --

10 A. (Witness complies.)

11 Q. -- it appears to be a document
12 generated by Crompco. Do you know who Crompco is?

13 A. Yes.

14 Q. Who are they?

15 A. It's a contractor that we use.

16 Q. All right. And the work that's
17 described on Pages 4 and 5 of the exhibit, were
18 you familiar with that work that was being
19 performed by Crompco?

20 A. I'm not sure I understand.

21 Q. Well, did you know that this work
22 was going on as described in this document?

23 MR. DROOGAN: Do you mean when it
24 was ongoing?

Page 12

1 MR. FOX: Yes, Glenside.

2 THE WITNESS: While it was ongoing?

3 BY MR. FOX:

4 Q. No. At any time. When was the
5 first time you became aware that the work --

6 A. Well, I know that this work was
7 completed.

8 Q. Okay. How is it that you became
9 aware that the work was completed?

10 A. As a maintenance technician we work
11 on all of the equipment in these stores. And when
12 -- I'm not sure what day, but sometime I arrived
13 there to work on the tank monitoring system and it
14 was a new tank monitoring system.

15 Q. And when you were there, did you
16 take notice of -- well, let me strike that.

17 Did you have any knowledge as to
18 whether as part of the work Crompco needed to
19 build a conduit trench?

20 A. Could you say that again?

21 Q. Were you aware as part of the work
22 that was done by Crompco at this location whether
23 Crompco constructed a conduit trench?

24 A. I was unaware of it before they

Page 13

1 started, so, no.

2 Q. As a maintenance technician for
3 this location for the two years -- when you
4 started there, how often would you be called out
5 to that location to take care of a maintenance
6 issue?

7 A. That could vary. It could be no
8 times a week or it could be ten times a week.

9 Q. And what is that process by which
10 you are notified of a problem at that particular
11 location for which you need to react and go there?

12 A. If it's critical I would be
13 alerted. If it's just something normal I just
14 would get it on my phone through our system.

15 Q. Do you have a company work van that
16 you work from?

17 A. Yes.

18 Q. Do you have a partner that you work
19 with or are you on your own?

20 A. I'm on my own.

21 Q. So just so I'm clear, the work
22 that's described in these documents from Crompco
23 and even Speedway, you had nothing to do with that
24 work?

Page 14

1 A. I had nothing to do with this work,
2 no.

3 Q. Okay. Do you have interaction as a
4 maintenance -- as a maintenance technician, do you
5 ever have any interaction with Crompco on work
6 that they're doing at any particular location?

7 A. Yes.

8 Q. What situations would it be that
9 you would have interaction with Crompco?

10 A. Retesting. When they go out to
11 test our equipment sometimes during the retest
12 I'll be present. That's not mandatory.

13 MR. FOX: Mark this as D-2, please.

14 - - -

15 (Whereupon, Exhibit D-2 was marked
16 for identification.)

17 - - -

18 MR. DROOGAN: Are these photos
19 taken by your expert?

20 MR. FOX: Yes.

21 MR. DROOGAN: Do you mind if I --
22 because I haven't seen these before
23 other than small photos in the report.

24 Do you mind if I just see them?

Page 15

1 MR. FOX: Yes. They're not the
2 greatest. And I just printed them off
3 into my printer.

4 MR. DROOGAN: Thank you.
5 Just off the record.

6 - - -
7 (Whereupon, a discussion took place
8 off the stenographic record.)

9 - - -
10 BY MR. FOX:

11 Q. Mr. Cullen, the paperwork that was
12 referenced in D-1 appears from my reading of that
13 that Crompco was required to run a ditch for the
14 conduit lines relating to the work that they did
15 at that location. And looking at D-2, do you know
16 whether that where you see the white narrower
17 cement line near the curb, did you take notice of
18 that after their work was completed?

19 MR. DROOGAN: Objection to the form
20 of the question. From a technical
21 standpoint you said run a ditch. I
22 think you meant to say they dug a ditch.

23 MR. FOX: Dug a ditch. Thank you,
24 Mike.

Page 16

1 MR. DROOGAN: What he's asking you
2 is did you see the area that was the
3 result of a trench that was dug for the
4 placement of conduit?

5 THE WITNESS: Yes.

6 BY MR. FOX:

7 Q. And when did you first take notice
8 of the trench that they dug for the conduit lines?

9 A. When I first arrived on the site
10 probably.

11 Q. Was the work completed? Do you
12 have a recollection of whether the work was
13 completed or was it still ongoing when you first
14 noticed?

15 A. Not that I recall.

16 Q. Did you ever have any conversations
17 with the Crompco people that were doing the work
18 about the lines that they were running?

19 A. No.

20 Q. Did you know what they were for?

21 MR. DROOGAN: Before the work was
22 done or eventually?

23 MR. FOX: Eventually, at any time.

24 THE WITNESS: Yes, I know what it

Page 17

1 was for.
 2 BY MR. FOX:
 3 Q. And what were they for?
 4 A. Wires, conduit.
 5 Q. Relating to the --
 6 A. Tank.
 7 Q. -- tank?
 8 A. Monitoring upgrade.
 9 Q. Do you know what the station was
 10 before, you know, not was, but who owned the
 11 station before Speedway owned the station?
 12 A. Hess.
 13 Q. After the work was completed, did
 14 you take notice -- did you have -- strike that.
 15 Did you have any conversations with
 16 Crompco personnel about the final condition of the
 17 surface of the trench?
 18 A. No.
 19 Q. Did you ever have any conversations
 20 with anyone at Speedway about the condition of the
 21 finished product?
 22 A. Not that I recall, no.
 23 MR. DROOGAN: This is D-3?
 24 MR. FOX: Yes, we'll make it D-3.

Page 19

1 MR. DROOGAN: Objection to the form
 2 of the question.
 3 You may answer.
 4 THE WITNESS: Painting is up to
 5 store personnel.
 6 BY MR. FOX:
 7 Q. Have you ever had any conversations
 8 since the completion of the work by Crompco with
 9 store personnel with respect to painting the curb?
 10 A. At this particular site?
 11 Q. Yes.
 12 A. Not that I recall.
 13 Q. Have you ever had any conversations
 14 with Speedway store personnel at other stores with
 15 respect to painting that curb?
 16 A. Not that I recall.
 17 Q. As a maintenance technician, would
 18 it be your responsibility, or not responsibility,
 19 but would one of your duties include observing
 20 unsafe conditions on the property?
 21 A. Yes.
 22 Q. And, for example, can you give me
 23 some examples of that?
 24 MR. DROOGAN: Things that he's

Page 18

1 MR. DROOGAN: D-3 is a photograph
 2 of the side of the Hess store or
 3 Speedway store in Glenside.
 4 ---
 5 (Whereupon, Exhibit D-3 was marked
 6 for identification.)
 7 ---
 8 BY MR. FOX:
 9 Q. Now, in that picture it appears
 10 that the conduit lines were run around the side of
 11 the building and under a door.
 12 Does that look like that to you?
 13 A. No. It's next to the door.
 14 Q. Okay. And what is it running into,
 15 those lines?
 16 A. What are these conduit, where are
 17 they built into the wall?
 18 Q. Right.
 19 A. To the tank monitor.
 20 Q. As a maintenance technician, would
 21 your responsibilities include painting a curb?
 22 A. No.
 23 Q. Do you know, if you know, if a curb
 24 was painted whose responsibility that would be?

Page 20

1 found to be deemed unsafe?
 2 MR. FOX: Yes, just generally
 3 speaking.
 4 BY MR. FOX:
 5 Q. Not this location, but just
 6 generally speaking?
 7 A. Maybe like an oil spill, a pothole,
 8 or an out-of-order dispenser, anything
 9 structurally wrong anywhere, just anything I can
 10 observe.
 11 MR. FOX: And I'll have this as
 12 D-4.
 13 ---
 14 (Whereupon, Exhibit D-4 was marked
 15 for identification.)
 16 ---
 17 BY MR. FOX:
 18 Q. I'm showing you what's been marked
 19 as D-4. Okay? And do you see the white strip in
 20 front of the sidewalk in front of the store?
 21 A. Yes.
 22 Q. Okay. The strip that is there,
 23 would you agree that it is similar in color to the
 24 curb?

Page 21

1 MR. DROOGAN: Object to the form of
 2 the question. He's not here as a -- you
 3 can ask him, but he's not offering any
 4 opinions here.

5 MR. FOX: I'm not asking --

6 MR. DROOGAN: Based solely on this
 7 photograph?

8 MR. FOX: Yes.

9 THE WITNESS: Would you repeat it?

10 BY MR. FOX:

11 Q. Would you agree that the strip,
 12 that strip, I'm not going to say how wide it is
 13 because I don't know if you know how wide it is,
 14 but the strip that runs in front of the curb
 15 that's next to the macadam?

16 A. It's concrete.

17 Q. I understand that.

18 A. I mean, they're both concrete, but
 19 I can tell a difference, if that's what you're
 20 asking.

21 Q. Yes. And have you ever -- since
 22 this work was done, have you ever had any
 23 conversations with any of the store employees,
 24 management, store manager I meant or assistant

Page 22

1 manager about whether that is a safety issue, that
 2 condition is a safety issue?

3 A. Not that I recall, no.

4 Q. Did you ever recommend to the
 5 manager or assistant manager or anyone who works
 6 at the store that either the macadam -- strike
 7 that -- that area, that white -- that strip
 8 in front of the curb should be sealed with black
 9 or that the curb should be painted yellow?

10 A. No, not that I recall.

11 Q. Who do you report to?

12 A. Our maintenance manager.

13 Q. Who's your maintenance manager?

14 A. Paul Evac.

15 Q. Was Paul Evac the maintenance
 16 manager in October 2015?

17 A. I'm unsure.

18 Q. Who is Bob Doyle?

19 A. Maintenance Manager Region 74.

20 Q. Would that include Glenside?

21 A. No.

22 Q. This work, according to the
 23 paperwork, looks like it was done in September and
 24 October of 2015. Do you know whether you were at

Page 23

1 this location since the completion of that work?

2 A. Yes.

3 Q. Were you there between, you know,
 4 when it was completed and January of 2016?

5 A. Repeat that.

6 Q. Were you there between the time
 7 that the work was completed in September or
 8 October 2015 and when this accident happened,
 9 which was January 2016?

10 MR. DROOGAN: January.

11 THE WITNESS: Yes.

12 BY MR. FOX:

13 Q. And when you were there, did you
 14 notice the strip that was created by Crompco for
 15 running the conduit lines?

16 MR. DROOGAN: The trench?

17 MR. FOX: The trench.

18 THE WITNESS: Yes.

19 BY MR. FOX:

20 Q. And in your visits during that time
 21 frame, did you ever have any discussion with
 22 anyone at the store with respect to that trench
 23 for any reason?

24 A. No.

Page 24

1 Q. Now, it's my understanding that
 2 that curb at the store is now painted yellow.

3 Are you aware of that?

4 A. Yes.

5 Q. How did that come about? Or let me
 6 ask you this. Did you have any involvement with
 7 that at all?

8 A. No.

9 Q. You had no involvement with respect
 10 to it being requested or performed?

11 A. No, none at all.

12 Q. Do you know whether the trench, for
 13 lack of a better word, has that ever been covered
 14 with blacktop up to the curb?

15 A. I mean, I don't know about right
 16 now because I'm not there, but that I'm aware of
 17 it's the same color it is in this picture.

18 MR. DROOGAN: Similar?

19 THE WITNESS: Similar.

20 BY MR. FOX:

21 Q. And when -- this location is no
 22 longer in your area, I guess, for maintenance
 23 responsibilities, Glenside?

24 A. Excuse me?

Page 25

1 Q. Glenside is not -- this Glenside
 2 location is no longer a location for you to handle
 3 as a maintenance tech?

4 A. No. It is a store that I handle,
 5 yes.

6 Q. Oh, it's still a store?

7 A. Yes.

8 Q. Okay. And, as far as you know,
 9 that trench condition is still the same?

10 A. The last time I was there the
 11 trench was still there.

12 Q. All right. Did you ever learn that
 13 my client, Mr. Sutton, had an accident at that
 14 location?

15 MR. DROOGAN: Other than from me?

16 MR. FOX: Other than from you,
 17 right.

18 MR. DROOGAN: Other than from me.

19 THE WITNESS: Not that I recall.

20 BY MR. FOX:

21 Q. So other than speaking to your
 22 counsel you had never had a conversation with the
 23 manager or the assistant manager or any of the
 24 workers at the location about this incident?

Page 26

1 A. I believe I may have been alerted
 2 to it through my phone. I'm unsure, though.
 3 Sometimes we get a hold order for something. I've
 4 seen lawsuits on my phone before because my name
 5 was on a bill that I got drug into.

6 MR. DROOGAN: That comes from
 7 counsel, though.

8 THE WITNESS: Yeah, I'm unsure
 9 where it comes from.

10 BY MR. FOX:

11 Q. Okay. The work that is completed
 12 by Crompco, and, in particular, what's referenced
 13 in D-1, is there anyone from Speedway that you're
 14 aware of that inspects the work before they sign
 15 off as a completed job?

16 MR. DROOGAN: Object to the form of
 17 the question.

18 You may answer.

19 THE WITNESS: No, I don't know who
 20 that person is.

21 BY MR. FOX:

22 Q. Does anyone do it?

23 A. Not that I --

24 Q. Does anyone check their work?

Page 27

1 A. Not that I'm aware of.

2 Q. You earlier said that you might do
 3 some retesting of the work that they did.
 4 Is that different?

5 A. It's different than what we're
 6 talking about here.

7 Q. Right.

8 A. This is on gas dispensers. Certain
 9 states have certain laws.

10 MR. FOX: Okay. That's all I have.
 11 Thank you.

12 - - -
 13 (Whereupon, the deposition
 14 concluded at 10:49 a.m.)

Page 28

1
 2
 3 CERTIFICATION

4
 5 I, DOUGLAS S. DIAMOND, hereby
 6 certify that the foregoing is a true and correct
 7 transcript transcribed from the stenographic notes
 8 taken by me on Monday, June 26, 2017.

9
 10
 11 DOUGLAS S. DIAMOND
 12 Court Reporter - Notary Public
 13 (This certification does not apply
 14 to any reproduction of this transcript, unless
 15 under the direct supervision of the certifying
 16 reporter.)

A	Cavo 1:14 2:8 cement 15:17 certain 27:8,9 certification 4:4 28:3,13 Certified 1:18 certify 28:6 certifying 28:15 check 26:24 chime 5:9 clarify 11:16 clear 13:21 client 25:13 collectively 8:16 color 3:14,15,16 20:23 24:17 come 11:9,21 24:5 comes 26:6,9 Commonwealth 1:19 company 13:15 completed 9:18,20 12:7,9 15:18 16:11,13 17:13 23:4,7 26:11,15 completion 19:8 23:1 complies 9:11 10:10 concluded 27:14 concrete 21:16,18 condition 17:16,20 22:2 25:9 conditions 19:20 conduit 12:19,23 15:14 16:4,8 17:4 18:10,16 23:15 connection 8:21 9:3 constructed 12:23 Contracting 6:2,4 contractor 10:15 conversation 25:22 conversations 16:16 17:15,19 19:7,13 21:23 correct 28:6 counsel 2:5,10 4:3 25:22 26:7 court 1:1,18,21 5:5	5:10,15 28:12 covered 24:13 created 23:14 critical 13:12 Crompco 10:12,12 10:19 11:7,11,23 12:18,22,23 13:22 14:5,9 15:13 16:17 17:16 19:8 23:14 26:12 Crompco's 11:17 Cullen 1:13 3:3 4:9 4:18,19 15:11 curb 15:17 18:21 18:23 19:9,15 20:24 21:14 22:8 22:9 24:2,14	DISTRICT 1:1,2 ditch 15:13,21,22 15:23 document 10:11,22 11:18 documents 8:17 9:2 9:10,13,15,21,24 13:22 doing 8:7 14:6 16:17 door 18:11,13 Douglas 1:17 28:5 28:11 Doyle 2:19 22:18 DROOGAN 2:8 7:6,17,24 8:10,19 8:23 10:23 11:24 14:18,21 15:4,19 16:1,21 17:23 18:1 19:1,24 21:1 21:6 23:10,16 24:18 25:15,18 26:6,16 droogan@litchfi... 2:11 drug 26:5 dug 15:22,23 16:3,8 duly 4:10 duties 6:23 19:19	examined 4:10 example 19:22 examples 19:23 Excuse 24:24 exhibit 10:17 14:15 18:5 20:14 EXHIBITS 3:12 expert 14:19
B	D 3:1 D-1 3:13 8:16 9:21 15:12 26:13 D-2 3:14 14:13,15 15:15 D-3 3:15 17:23,24 18:1,5 D-4 3:16 20:12,14 20:19 date 1:16 6:16 day 12:12 deemed 20:1 Defendant 1:9 Defendants 2:10 deposition 1:13 4:23 27:13 described 10:17,22 11:17 13:22 DESCRIPTION 3:12 Diamond 1:18,21 28:5,11 difference 21:19 different 27:4,5 direct 28:15 discussion 15:7 23:21 dispenser 20:8 dispensers 6:10 8:8 27:8	E 2:1,1 3:1 E-mail 2:6,11 earlier 27:2 EASTERN 1:2 Easton 4:22 7:12 either 22:6 Emerson 1:22 employed 5:20,22 6:13 employees 21:23 equipment 12:11 14:11 ESQUIRE 2:2,8 Evac 22:14,15 eventually 16:22,23 exact 6:16 Examination 3:4 4:13	F 2:2 familiar 10:18 far 25:8 FAX 1:23 feel 5:8 filings 4:4 final 17:16 finish 5:14 7:6 finished 17:21 first 7:7,22 8:5 12:5 16:7,9,13 fixing 6:10,10 follows 4:11 foregoing 28:6 form 4:6 7:17 8:10 15:19 19:1 21:1 26:16 found 20:1 Fox 2:2,2 3:4 4:15 4:19 7:8,21 8:1,14 8:22 9:1 11:1,4 12:1,3 14:13,20 15:1,10,23 16:6 16:23 17:2,24 18:8 19:6 20:2,4 20:11,17 21:5,8 21:10 23:12,17,19 24:20 25:16,20 26:10,21 27:10 frame 23:21 Frederick 1:13 3:3 4:9,18 free 5:8 front 20:20,20 21:14 22:8	
C			G	
C 2:1 call 7:12 called 7:2 13:4 calls 7:1 care 13:5			gas 6:10 27:8 generally 9:14 20:2 20:6	

generated 10:12 give 19:22 given 4:23 Glenside 4:22 7:13 7:14 9:16 12:1 18:3 22:20 24:23 25:1,1 go 10:7 13:11 14:10 going 5:2,12 8:15 10:9,22 11:3 21:12 good 11:5 greatest 15:2 guess 24:22	JR 2:2,8 June 1:11 6:17,19 28:8	K kind 5:19 know 5:17,18 9:14 9:17,23 10:12,21 11:6 12:6 15:15 16:20,24 17:9,10 18:23,23 21:13,13 22:24 23:3 24:12 24:15 25:8 26:19 knowledge 5:3 11:19 12:17	numbers 10:8	person 26:20 personnel 17:16 19:5,9,14 Philadelphia 1:15 2:4,10 phone 13:14 26:2,4 Photocopy 3:14,15 3:16 photograph 3:14 3:15,16 18:1 21:7 photos 14:18,23 picture 18:9 24:17 place 15:7 placement 16:4 Plaintiff 2:5 Plaintiffs 1:6 please 4:17 14:13 point 11:9 position 6:21 pothole 20:7 present 1:20 2:18 14:12 printed 10:5 15:2 printer 15:3 probably 16:10 problem 13:10 process 13:9 product 17:21 property 19:20 Public 1:19 28:12 pump 6:7,8 7:4 8:8
H h/w 1:5 handle 25:2,4 handwritten 10:8 happened 4:21 23:8 head 5:11 Hess 17:12 18:2 hired 6:14,20 hold 26:3	L lack 24:13 Lane 1:22 Law 1:14 2:2 laws 27:9 lawsuits 26:4 lead 6:22,24 7:16 learn 25:12 line 15:17 lines 15:14 16:8,18 18:10,15 23:15 listed 9:23 11:18 Litchfield 1:14 2:8 LLC 1:8 LLP 2:8	Market 1:15 2:9 mean 10:23 21:18 24:15 meant 15:22 21:24 MICHAEL 2:8 Mike 15:24 mind 14:21,24 Monday 28:8 monitor 18:19 monitoring 12:13 12:14 17:8 motors 6:11 Mullen 6:2,3,6	N N 2:1 3:1 name 4:16,19 9:23 26:4 narrower 15:16 near 15:17 need 13:11 needed 12:18 never 9:7 25:22 new 1:22 12:14 nods 5:11 normal 13:13 NORTH 2:3 Notary 1:18 28:12 notes 28:7 notice 12:16 15:17 16:7 17:14 23:14 noticed 16:14 notified 13:10 number 5:2	P P 2:1,1 P.C 2:2 page 3:2,12 10:8,9 11:18 pages 8:16 10:8,17 painted 18:24 22:9 24:2 painting 18:21 19:4 19:9,15 paperwork 15:11 22:23 part 12:18,21 particular 5:4 13:10 14:6 19:10 26:12 partner 13:18 Paul 22:14,15 Pennsylvania 1:2 1:16,20 2:4,10 people 16:17 performed 10:19 11:11,22 24:10 25:19
I identification 14:16 18:6 20:15 incident 25:24 include 18:21 19:19 22:20 indicating 9:4 inspects 26:14 interaction 14:3,5 14:9 Invoices 3:13 involved 6:8 9:19 involvement 24:6,9 issue 13:6 22:1,2 issues 5:4	J January 23:4,9,10 JEAN 1:5 Jersey 1:22 job 26:15 John 2:2 4:19 johnfox@jfoxla... 2:6	M macadam 21:15 22:6 maintenance 6:7,9		Q question 4:6 5:7,10 5:14 7:7,18 8:11 11:5 15:20 19:2 21:2 26:17 questions 5:3,6,9
				R R 2:1 react 13:11 reading 15:12 really 5:10 reason 8:4 23:23 recall 5:18 6:16 7:22 8:4,7 11:15 11:20 16:15 17:22 19:12,16 22:3,10 25:19

recollection 16:12	sealing 4:3 see 14:24 15:16 16:2 20:19	stores 12:11 19:14 Street 1:15 2:3,9 strike 12:16 17:14 22:6	times 13:8,8 title 6:21 transcribed 28:7 transcript 28:7,14	23:11,18 24:19 25:19 26:8,19
recommend 22:4	seen 8:17,20 9:2 14:22 26:4	strip 20:19,22 21:11,12,14 22:7 23:14	trench 12:19,23 16:3,8 17:17 23:16,17,22 24:12 25:9,11	word 24:13
record 4:17 15:5,8	sensors 6:11 September 8:9 22:23 23:7	structurally 20:9	trial 4:7	work 6:1,3 7:1 8:7 8:21 9:3,15,17,20 10:16,18,21 11:6 11:7,10,17,19,22
referenced 9:20 15:12 26:12	service 7:1 Sewell 1:22 show 8:15 showing 20:18 side 18:2,10 sidewalk 20:20 sign 26:14 signing 4:3 similar 20:23 24:18 24:19	Suite 1:15 2:4,9 supervision 28:15 sure 10:20 12:12 surface 17:17 Sutton 1:5 4:20 25:13	true 28:6 two 2:3 5:24 6:14 13:3	12:5,6,9,10,13,18 12:21 13:15,16,18 13:21,24 14:1,5 15:14,18 16:11,12 16:17,21 17:13 19:8 21:22 22:22 23:1,7 26:11,14 26:24 27:3
referring 9:15	sworn 4:10 system 12:13,14 13:14	U	workers 25:24	
regarding 4:20	T	unaware 12:24	working 6:11	
Region 22:19	T 2:8 take 5:11,16 9:9 12:16 13:5 15:17 16:7 17:14	understand 5:7,10 10:20 21:17	works 22:5	
related 7:4	taken 1:14 14:19 28:8	understanding 24:1	wrong 20:9	
relating 15:14 17:5	talking 5:16 27:6	UNITED 1:1	X	
relevant 5:5	tank 6:7,8 7:4 8:8 12:13,14 17:6,7 18:19	unsafe 19:20 20:1	X 3:1	
repeat 21:9 23:5	tech 25:3	unsure 22:17 26:2 26:8	Y	
report 14:23 22:11	technical 15:20	upgrade 17:8	Yeah 26:8	
reporter 1:18 5:5 5:11,16 28:12,16	technician 6:22,24 7:16 10:1,5 12:10 13:2 14:4 18:20 19:17	use 10:15	years 5:24 6:5,14 13:3	
REPORTING 1:21	Tel 2:5,11	V	yellow 22:9 24:2	
represent 4:20	tell 5:8 21:19	van 13:15	Z	
reproduction 28:14	ten 6:5 8:16 13:8	vary 13:7	0	
requested 11:6 24:10	test 14:11	verbally 5:12	08080 1:22	
required 15:13	testified 4:11	visited 7:23 8:5	1	
reserved 4:6	Thank 15:4,23 27:11	visits 23:20	10:12 1:17	
respect 6:24 19:9 19:15 23:22 24:9	Thanks 7:7	vs 1:7	10:49 27:14	
respond 5:12	Things 19:24	W	100 2:3	
responsibilities 18:21 24:23	think 6:17 15:22	waived 4:4	1200 2:9	
responsibility 18:24 19:18,18	time 4:7 7:22 8:5 11:9,21 12:4,5 16:23 23:6,20 25:10	wall 18:17	1220 1:15	
responsible 7:16	wide 21:12,13	way 9:19	14 3:14	
result 16:3	wife 4:20	we'll 17:24	15 6:18	
retest 14:11	Wires 17:4	we're 27:5	1515 1:14 2:9	
retesting 14:10 27:3	witness 3:2 4:10 7:20 8:13 9:4,11 10:10 11:2 12:2 16:5,24 19:4 21:9	week 13:8,8	18 3:15	
right 6:17 10:16 18:18 24:15 25:12 25:17 27:7		white 15:16 20:19 22:7	18TH 2:3	
Road 4:22		wide 21:12,13	19102 1:16 2:10	
ROBERT 2:19		wife 4:20	19103 2:4	
Rod 1:4 4:20		Wires 17:4	2	
run 15:13,21 18:10		witness 3:2 4:10 7:20 8:13 9:4,11 10:10 11:2 12:2 16:5,24 19:4 21:9	2:16-cv-04765 1:6	
running 16:18 18:14 23:15				
runs 21:14				
S				
S 1:17 2:1 28:5,11				
safety 22:1,2				
sealed 22:8				

20 3:16
2015 6:19 8:9 22:16
22:24 23:8
2016 23:4,9
2017 1:11 28:8
2030 2:4
215 2:5,11
258 4:22 7:12
26 1:11 28:8

3

4

4 1:22 3:4,13 10:9
10:17 11:18

5

5 10:17 11:18
557-0111 2:11
568-6868 2:5
589-1107 1:23
589-4741 1:23

6

7

74 22:19

8

856 1:23,23

9
